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November 13, 2009

**VIA E-FILING**

Charles L.A. Terreni, Esquire  
Chief Clerk of the Commission  
SC Public Service Commission  
P. O. Drawer 11649  
Columbia, SC 29211

RE: Review of Avondale Mills, Incorporated's Rates  
Approved in Order No. 2009-394  
Docket No. 2009-342-WS

Dear Mr. Terreni:

Enclosed please find the Proposed Order in the above referenced docket. By carbon copy I am serving all parties of record.

If you or counsel has questions, please do not hesitate to contact me.

Sincerely,

ELLIOTT & ELLIOTT, P.A.

A handwritten signature in black ink, appearing to be 'Scott Elliott', written over the printed name.

Scott Elliott

SE/jcl

Enclosures

cc: Parties of record w/enc.

**STATE OF SOUTH CAROLINA**  
**BEFORE THE**  
**PUBLIC SERVICE COMMISSION**  
**DOCKET NO. 2009-342-WS, ORDER NO. 2009-**  
**NOVEMBER \_\_, 2009**

**RE:   Review of Avondale Mills,            )**  
      **Incorporated's Rates Approved    )**           **ORDER**  
      **in Order No. 2009-394                )**

This matter was before the South Carolina Public Service Commission ("Commission") October 6, 2009, for a hearing on the application to review Avondale Mills, Incorporated's rates approved in Order No. 2009-394 in Docket No. 2008-460-WS.

The docket was opened August 12, 2009, after the Aiken County Delegation petitioned the Commission to amend Order No. 2009-394. In its petition of August 4, 2009, the Aiken County Delegation alleged that the rates approved by the Commission in Order No. 2009-394 were too high; the Aiken County Delegation now argues that the rates should be reduced temporarily and phased in. The Commission's August 12, 2009, directive, which re-alleges the allegations of the petition of the Aiken County Delegation, serves as the application herein.

It is conceded, and the Commission so holds, that Order No. 2009-394 was validly issued. The record is clear that both the Aiken County Delegation and Avondale's customers had adequate notice of the proposed rates approved in Order No. 2009-394 and that this Commission considered all concerns raised by Avondale's customers in Docket No. 2008-460-WS. Neither the Aiken County Delegation nor Avondale's customers raise any new issues in the instant docket.

Present at the October 6, 2009 hearing representing the Respondent Avondale Mills, Inc. ("Avondale") was Scott Elliott, Esquire. Present representing the Office of Regulatory Staff ("ORS") were Jeffrey N. Nelson, Esquire and Shealy Boland Reibold, Esquire. Also appearing were Intervenor Joe A. Taylor and Michael Hunt.

At the outset of the hearing, Avondale renewed its Motion to Dismiss filed and served September 1, 2009. The Commission had denied Avondale's Motion to Dismiss in part by Directive dated September 9, 2009, and held the balance of Avondale's Motion in abeyance. The Commission took Avondale's argument in support of its Motion to Dismiss under advisement and proceeded with the hearing.

Testifying was the Intervenor Joe A. Taylor. Also testifying was Avondale's witness Jack R. Altherr, Jr. The ORS presented no testimony. However, ORS did file and serve a letter dated August 31, 2009, advising the Commission that the ORS audit in Docket No. 2008-460-WS was in all respects thorough and complete and that the ORS was unaware of any significant changes in the company's operations, books or records for the test year which would warrant a reexamination by ORS or would result in any materially different findings or recommendations other than those in Docket No. 2008-460-WS.

Based on the record in this matter and the arguments of counsel, the Commission is now persuaded that the Aiken County Legislative Delegation lacked standing to petition the Commission to open the instant docket and that Avondale's Motion to Dismiss should have been granted by the Commission for this reason. S.C. Code Ann. Sections 58-5-270, 8-13-785 and 58-3-142. In addition, the petition of the Aiken County Delegation fails to allege facts sufficient to justify the amendment of Order No. 2009-394. Not only must the allegations of the petition and application state a cause of action, but due process requires that a litigant be placed on notice

of the issues which this Commission is to consider. Henderson v. Gould, Inc., 288 S.C. 261, 341 S.E.2d 806 (1986). Because the allegations of the petition and application fail to allege facts sufficient to justify the amendment of Order No. 2009-394 and fail to provide Avondale with notice of the allegations against it, Avondale's Motion to Dismiss should be granted.

However, with the benefit of a complete record, the Commission is compelled to conclude that the record is devoid of any evidence which would justify the amendment of Order No. 2009-394 and for the reasons set out, the Commission grants Avondale's Motion to Dismiss the application and grants Avondale judgment.

The evidence before the Commission in this docket consists of the evidence before the Commission in Docket No. 2008-460-WS. Mr. Altherr's testimony in the instant docket included Avondale's Application, Avondale's testimony and exhibits, and the ORS testimony and exhibits in Docket No. 2008-460-WS. There is testimony in the record from Avondale's customers at the September 30, 2009, public hearing in Graniteville, South Carolina, and at the October 6, 2009, hearing with respect to the size of the rate increase approved by Order No. 2009-394 and with respect to water loss and water pressure. However, all of the issues raised by Avondale's customers in this docket were raised by Avondale's customers in Docket No. 2008-460-WS and were addressed by the Commission in Order No. 2009-394.

Moreover, it is uncontroverted in the record before the Commission in the instant docket that Avondale has taken the steps urged upon it by this Commission to substantially reduce its water loss and stabilize water pressure. Indeed, the record reflects that according to South Carolina Department of Health and Environmental Control ("DHEC") pressure testing, Avondale's water pressure now meets or exceeds the requirements of this Commission and DHEC. In addition to the foregoing, the ORS correspondence of August 31, 2009, compels the

conclusion that the rates approved in Order No. 2009-394 should be upheld and left in effect.

Avondale must have approved rates sufficient to make it financially sound for the discharge of its public duties. Southern Bell Telephone and Telegraph Company v. Public Service Commission, 270 S.C. 590, 244 S.E.2d 278 (1978). Avondale will require the rates approved in Order No. 2009-394 to upgrade its water and sewer system and provide adequate service to its customers.

The record is entirely devoid of evidence justifying the amendment, alteration or rescission of Order No. 2009-394 approving Avondale's rates. Consequently, the Commission is compelled to dismiss the application herein and grant judgment in favor of Avondale. Heater of Seabrook, Inc. v. Public Service Commission of South Carolina, 332 S.C. 20, 503 S.E. 2d 739 (1998). Avondale's rates approved in Order No. 2009-394 shall remain in effect.

The Aiken County Delegation and Avondale's customers now argue that the rates granted by Order No. 2009-394, while appropriate, should have been phased in to permit Avondale's customers to become accustomed to the new rate schedule. The Commission notes the late-filed exhibit filed by Avondale November 12, 2009, reflecting that 78% of Avondale's customers have paid their July bills in full and that a similar number have paid their August bills in full. Moreover, the Commission considered the issue of rate shock and addressed it in Order No. 2009-394. The Commission concludes that Avondale requires the revenue generated by the new schedule of rates issued in Order No. 2009-394 to upgrade its system for the benefit of its customers.

Of course, it is too late to phase in the rates issued in Order No. 2009-394. Any reduction in Avondale's rates must be prospective and not retroactive. South Carolina Electric and Gas Company v. Public Service Commission, 275 S.C. 487, 272 S.E. 2d 793(1980).

There is simply no evidence of record to justify amending Order No. 2009-394. For the reasons set out, the Commission grants Avondale's Motion to Dismiss and enters judgment in favor of Avondale in this docket.

IT IS SO ORDERED.

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Elizabeth B. Fleming, Chairman

ATTEST:

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John E. Howard, Vice Chairman (SEAL)

## CERTIFICATE OF SERVICE

The undersigned employee of Elliott & Elliott, P.A. does hereby certify that she has served below listed parties with a copy of the pleading to the persons indicated below by mailing a copy of same to them in the United States mail, by regular mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

RE: Review of Avondale Mills, Incorporated's Rates  
Approved in Order No. 2009-394


DOCKET NO.: 2009-342-WS

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PLEADING: LETTER AND PROPOSED ORDER

  
Jackie C. Livingston, Paralegal

November 13, 2009